IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1041 OF 1998

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALJIBHAI MAGANLAL SALVI

Versus

MANAGING DIRECTOR,
GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

Appearance:
PARTY-IN-PERSON for Petitioner
MR. PARESH UPADHYAY for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 10/03/2004

ORAL JUDGEMENT

1. The present petition is filed seeking the relief set out in the memo of the petition, which is in Gujarati, that on the ground of deemed date for promotion

to the post of Deputy Executive Engineer on 18th May, 1981 (as ordered in the order dated 23rd September, 1996), the respondent, Gujarat Water Resources Development Corporation Limited (hereinafter referred to as "GWRDC" for short) be directed to pay the difference of salary to the tune of Rs.1,40,696=50 with interest.

2. The facts of this petition are almost identical to that of Special Civil Application No.1040 of 1998. This petition was filed on 16th February, 1998 and was placed on Board on 24th February, 1998 and on that day, the Court had passed the order as under:

"Called out twice. Party in person is not present. Hence, S.O. to 5-3-1998."

On 5th March, 1998, this Court (Coram:K.R.Vyas, J.) issued Notice making it returnable on 6th April, 1998, permitting direct service. On 6th April, 1998, the matter was adjourned to 27th April, 1998. Thereafter, the matter was placed on Board on 30th June, 1998 and on that day, the Court adjourned the matter to 2nd July, 1998 and on that day, the Court passed a common order in Special Civil Application Nos.1040/98, 1041/98, 1042/98, 1044/98 and 1045/98 and these matters were rejected. Against that order, Letters Patent Appeal No.1150 of 1998 was filed, which was allowed by a Division Bench of this Court by judgement and order dated 9th December, 1998. The order passed by the learned single Judge was quashed and set aside and the matters were remanded for deciding in accordance with law. The matter was then placed on Board and on 28th February, 2000, this Court (Coram:Ms.R.M.Doshit, J.) passed the following order:

"Registry is directed to post this application for admission hearing on 15th March, 2000."

Thereafter, no order is found in this matter except that the matter was once placed on 31st March, 2000, when it was adjourned to 7th April, 2000. Thereafter, the matter was placed on 28th January, 2004 and it was adjourned to 26th February, 2004 and on 26th February, 2004, it was adjourned to 5th March, 2004.

3. Rule.

Mr.Paresh Upadhyay, learned Advocate for the respondent, waives service of Rule.

At the request of both the parties, the matter is taken up for final disposal.

4. The party-in-person submitted that as he is given the deemed date of promotion to the post of Deputy Executive Engineer of 18th May, 1981, the authorities ought to have granted him the arrears of salary also. The order dated 23rd September, 1996 whereby the deemed date is given is annexed at Annexure-1 to the petition. It is mentioned therein that the seniority list of the Deputy Executive Engineer (Mechanical) issued by the respondent-GWRDC vide Circular dated 13th September, 1996, item number four in the documents under reference, subject to that the deemed date is granted with retrospective effect. It is also mentioned in the said order that the petitioner is not entitled for any monetary benefits due to the grant of the deemed date. It will be taken into consideration only for the purpose of seniority and promotion. Mr.Upadhyay, learned Advocate for the respondent, submitted that it was by virtue of this order wherein it was stated that the deemed date will be considered for the purpose of seniority and promotion, that he was held eligible for being considered for the post of Executive Engineer.

5. The party-in-person relied upon the representation made by him dated 8th August, 1997 to the Chairman of the respondent-GWRDC, a copy of which is produced at Annexure-2 to the petition. He submitted that for the reasons set out in the said representation, the authorities ought to have considered his case for grant of monetary benefits also. He invited the attention of the Court to the contents of the said representation wherein he has relied upon a judgement dated 26th April, 1996 of this Court (Coram: R.K.Abichandani, J.) rendered in Special Civil Application Nos.2974/1998, 2264/1993, 2870/1995 and 2873/1995. He also invited the attention of the Court to few decisions referred to in the said representation, which are as under:

(i) (1983) 20 G.L.T.133 in the matter of Pratapsingh Mukhatiarsing vs. Union of India.

(ii) 1991 (4) S.C.C.109 in the matter of Union of India vs. K.V.Jankiraman.

(iii) 1992 (2) G.L.H.(U.J.) 30 in the matter of J.C.Shah vs. Additional Commissioner.

Besides, the petitioner has also cited four other decisions, which are as under:

(i) G.L.H.(U.J. 37) 1987(2);
(ii) G.L.R. 28 (2) 1991;
(iii) S.L.R. (1) 50 1979; and,
(iv) S.L.R.(78) 1972.

6. The main submission of the petitioner is that the petitioner was granted the deemed date and with that, he ought to have been granted monetary benefits also because, he was denied the promotion to the post of `Deputy Executive Engineer' for no fault on his part. Therefore, once it was decided to grant him deemed date, the same should have followed with the monetary benefits. The petitioner has placed on record along with the petition, a statement of the amount receivable by the petitioner from the respondent-GWRDC at page 14 of the petition, which consists of nine items, of which, the petitioner declared that some of the demands are received, while, in case of some of the items, the amount is received but interest is due.

7. Mr.Paresh Upadhyay, learned Advocate for the respondent, relied upon a circular dated 9th March, 1988 of the General Administration Department (`the GAD' for short), Government of Gujarat, whereby the phrase, `all purposes', used in the Government Circular dated 28th July, 1987 of the GAD is explained. It is stated in the Circular that the phrase, `all purposes', used in the Circular dated 28th July, 1987 is generally interpreted to mean, `grant of difference of salary and allowances', but then, the same should be interpreted to mean `all administrative purposes like seniority and counting of experience for the purpose of promotion only'. It is specifically mentioned in the said circular that the term, "all purposes", does not include monetary benefits like salary, increment, gratuity, etc.

8. Mr.Upadhyay, the learned Advocate, submitted that in fact, the case of the petitioner had remained pending on the point of his absorption in the respondent-GWRDC with the Government for long. He submitted that originally, the petitioner was serving as a Mechanical Supervisor with the District Panchayat, Banaskantha and when the activity of irrigation by tubewells was handed over to the present respondent i.e. GWRDC, the question of placing the persons engaged in such activity in the District Panchayat, with the GWRDC arose and, therefore, the concerned employees were asked to exercise an option. Mr.Upadhyay has placed on record a copy of the order dated 22nd July, 1980 issued by the Irrigation Department whereby at the request of the petitioner, he was transferred to the respondent-GWRDC. But then, as he had

opted for the Panchayat's service, he was sent back to the District Panchayat. Mr.Upadhyay next submitted that the District Panchayat was not having any such activity wherein the services of the petitioner could have been utilised. Therefore, the Irrigation Department of the Government of Gujarat passed another order dated 6th February, 1981 whereby the services of the petitioner, Supervisor (Mechanical), were placed under the Executive Engineer, Ukai Project, independent of the respondent-GWRDC. The petitioner then, having realised that it might create problem for him, again requested the Government to put him with the respondent-GWRDC. That is why, the final order was passed by the State Government (Narmada Development Department) on 27th May, 1985 and the petitioner was placed under the respondent-GWRDC.

9. From the aforesaid documents, it is clear that it was on account of indecisive state of mind of the petitioner that he could not be absorbed in the respondent-GWRDC at the initial stage i.e. in the year 1980 and it was only in the year 1985 that the petitioner came to be finally placed under the respondent-GWRDC. The respondent, having felt that a question of payment of some dues may arise on account of the late absorption, wrote to the Government that in future, if any, liability arises towards any service benefits to be given to the petitioner for the period prior to 1981, the same will have to be borne by the State Government. This view of the respondent was endorsed by Narmada Water Development Department by its letter dated 5th March, 1986. The date, which was agreed between the respondent and the State Government, was 14th December, 1981. Despite that, the respondent, by granting indulgence to the petitioner, granted deemed date of 18th May, 1981 for promotion to the post of Deputy Executive Engineer. The respondent, being alive to the future complications in the matter, wrote a letter dated 29th July, 1994 to the Under Secretary, Narmada & Water Resources Department, asking a final decision on the aspect as to from which particular date, the petitioner is to be considered to have been absorbed in the services of the respondent because in the year 1978, when the petitioner was transferred to the respondent-GWRDC from the services of the District Panchayat, he did not opt to continue with the respondent and opted to continue with the District Panchayat. It is only at a late stage that he requested to post him under the respondent-GWRDC. The State Government (Narmada & Water Resources Department) finally decided the issue by order dated 22nd September, 1994 whereby it was decided that the petitioner should be considered to have been absorbed in the services of the respondent-GWRDC only

with effect from 14th December, 1981. Despite this, by virtue of the directions issued by this Court in the decision aforesaid wherein the Court directed the respondent to consider again the question of giving the deemed date of promotion to the petitioner in the post of the Deputy Executive Engineer on the basis of his initial date of recruitment i.e. 9th July, 1964, the case of the petitioner was considered by the respondent and though he was given promotion by order dated 3rd September, 1991 by order dated 23rd September, 1996, he was given the deemed date of promotion, being 18th May, 1981.

10. Mr.Upadhyay, the learned Advocate, submitted that the respondent has complied with the directions given by this Court in the aforesaid decision in letter and spirit. He submitted that it is only in light of the following observations of this Court that the case of the petitioner was considered by the respondent-GWRDC and he was granted the deemed date of promotion of 18th May, 1981, which is prior to the date from which he was ordered to be absorbed in the respondent. The observations taken into consideration are as under:

> "... ... The facts on record indicate that when the petitioner's name was omitted from the earlier seniority lists of Additional Assistant Engineers (Mechanical) by the Corporation, many of his juniors, who are shown in the seniority list as on 21.1.1990, came to be promoted as Deputy Executive Engineers. This fact is shown from the remarks against their names in that list. Serial No.2 Patel Joitaram G. was promoted on 18.5.1981 (though in the copy of the list annexed to the petition, due to typing error, it was shown as "8.1.1985", as is now clarified by the counsel for the respondent-Corporation). In the same way, serial No.3, Solgama and serial No.4, Prajapati, who were junior to the petitioner, were promoted to the post of Deputy Executive Engineer on 25.5.1981 and 22.5.1981, respectively. Serial No.5 J.V.Rathod also came to be promoted on 18.5.1981 as Deputy Executive Engineer. Even Serial No.13 Shri D.M.Chauhan, who was appointed as a temporary Supervisor only on 21.12.1972 and was at serial No.13 of the said seniority list in which the petitioner was at Serial No.1, was already promoted on 21.1.1984 as Deputy Executive Engineer. ... ..."

It is only because of the aforesaid observations

of this Court that the respondent-GWRDC has granted the deemed date of promotion of 18th May, 1981 to the petitioner; this shows the spirit in which the respondent-GWRDC has obeyed the order of this Court.

11. So far as the monetary benefits are concerned, in view of the contents of the circular of the Government of Gujarat dated 9th March, 1988 and also in view of the facts of this case, this Court is of the opinion that no monetary benefits can be granted to the petitioner. In the result, for the foregoing discussion, this petition fails and is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
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